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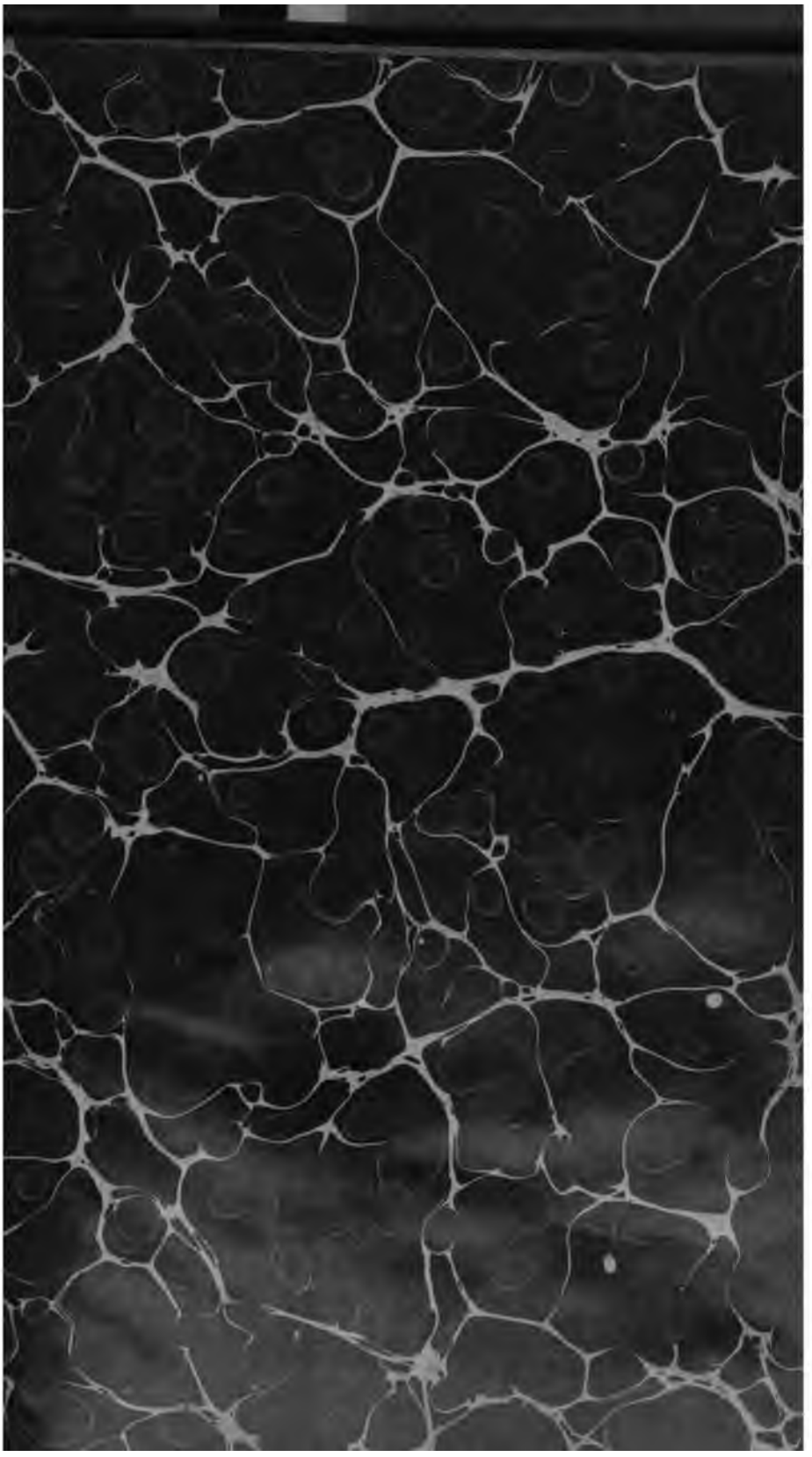

HEARINGS

BEFORE THE

SUBCOMMITTEE OF THE HOUSE COMMITTEE ON APPROPRIATIONS,

CONSISTING OF

MESSRS. GARDNER, BROWNLOW, KEIFER, SULLIVAN, AND LIVINGSTON,

IN CHARGE OF

PENSION APPROPRIATION BILL FOR 1907.

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PENSION APPROPRIATION BILL.

HEARINGS CONDUCTED BY THE SUBCOMMITTEE, MESSRS. WASHINGTON GARDNER (CHAIRMAN), W. P. BROWNLOW, J. W. KEIFER, J. A. SULLIVAN, AND L. F. LIVINGSTON, OF THE COMMITTEE ON APPROPRIATIONS, HOUSE OF REPRESENTATIVES, IN CHARGE OF THE PENSION APPROPRIATION BILL.

COMMITTEE ON APPROPRIATIONS,
HOUSE OF REPRESENTATIVES,
Friday, January 19, 1906.

STATEMENT OF MR. VESPASIAN WARNER, COMMISSIONER OF PENSIONS, ACCOMPANIED BY MR. A. H. THOMPSON, CHIEF OF FINANCE DIVISION, PENSION OFFICE.

Mr. GARDNER. We will take up the bill for appropriations for pensions for the next fiscal year. We have with us the Commissioner of Pensions and Mr. Thompson, the Chief of the Finance Division. We shall be glad to have all the members of the committee to feel entirely free to ask any questions that occur to them in the course of the hearing.

ARMY AND NAVY PENSIONS.

I see, Mr. Commissioner, that your estimates for 1907 are increased over 1906.

Mr. WARNER. Yes.

Mr. KEIFER. How much?

Mr. WARNER. I think we ask now for $140,000,000.

Mr. THOMPSON. The regular appropriation this year was $137,000,000, and we ask for $140,000,000 the coming year. But you understand for the present fiscal year we had to ask for a deficiency of 3½ millions, which would make $140,500,000 for the present fiscal year.

Mr. WARNER. I think the amount should be made $139,000,000 for 1907, judging from the way the thing has been running for the last three or four months.

Mr. GARDNER. You think the estimate for this year can be reduced to $139,000,000?

Mr. WARNER. Yes, sir. The pension roll has decreased 10,000.

Mr. BROWNLOW. What has that decrease come from?

Mr. WARNER. From deaths and dropping out. The total number has decreased that much. That includes widows, orphans, and all others, notwithstanding the Spanish war. They are dying very rapidly.

Mr. SULLIVAN. The only way they do drop off is by death?

Mr. WARNER. No; by remarriage, too, oftentimes in the cases of women, and oftentimes fraudulent ones are dropped. Occasionally a

pensioner surrenders it voluntarily. Once in a while pensioners will send back money they have drawn that they say they are not entitled to. In one case a man sent back $1,900. He sent me two drafts, and instead of getting them payable to himself at the same bank and indorsing them to my order, he got one at one bank and one at another, payable to myself individually. He was one of Mr. Capron's constituents. He said he was not entitled to it, and he gave it up.

Mr. GARDNER. Do you know the net decrease in the last three months?

Mr. WARNER. Do you mean pensioners or money?

Mr. GARDNER. I mean the number of pensioners.

Mr. THOMPSON. There are 993,571 pensioners at the present time. That is according to the latest statistics we have. On June 30, 1905, there were 998,441 pensioners. In January a year ago the roll was 10,000 greater than it is now.

Mr. KEIFER. Give me that year exactly again.

Mr. THOMPSON. There were 1,004,196 pensioners on January 31, 1905, to be accurate. That was the high-water mark.

Mr. GARDNER. I notice under Exhibit No. 7, on page 9 of your annual report, Mr. Commissioner, that there was a decrease of 2½ million dollars, in round numbers, for pensions under the general law on account of disabilities contracted in the line of duty in the civil war. I notice also that under Exhibit 8, on the same page, there is shown an increase for 1905 of $2,374,000 for pensions under the act of June 27, 1890, as compared with the preceding year, 1904. Then under Exhibit 9, on page 9, there is shown an increase of about $300,000 for 1905 over 1904 for pensions on account of service in the war with Spain and the insurrection in the Philippine Islands.

Mr. WARNER. I do not understand the first part of your question, Mr. Chairman.

Mr. GARDNER. The decrease under the general law is 2½ million dollars, in round numbers. That is on page 9 of your report, Exhibit 7, near the top.

Mr. WARNER. That is the statement of the amount paid. The total amount was $58,118,745.60, as against $61,595,498.33, a decrease of $2,476,752.73. That is under the general law.

Mr. GARDNER. The decrease there is 2½ millions, in round numbers?

Mr. WARNER. Yes, sir.

Mr. GARDNER. In Exhibit 8 the increase is 2½ million dollars. It practically offsets the other. Now, in Exhibit 9, the increase under the Philippine and Spanish war is over $400,000——

Mr. SULLIVAN. $300,000——

Mr. GARDNER. That is right, $300,000—so that the net increase last year is some $200,000 or $300,000, taking the net value of the pensions. What is the probability of that ratio keeping up for any length of time?

Mr. WARNER. My impression is that it will go down. What is yours, Mr. Thompson?

Mr. THOMPSON. I think so, too.

Mr. GARDNER. The increase under the Spanish-American war and the Philippine insurrection pensioners more than makes up the loss from the invalids and general-law pensioners and the 1890 pensioners from the civil war?

Mr. WARNER. Yes; that is last year. Hereafter it will not be equal to the decrease.

Mr. GARDNER. Do you anticipate that the relative increase of the Spanish-American war pensioners and the Philippine insurrection pensioners will keep up?

Mr. WARNER. No; I do not. The reason is that about all the old soldiers who are entitled to pensions have already applied for them.

Mr. KEIFER. You mean to include the Spanish war soldiers.

Mr. WARNER. Yes. You see they examined those men when they went in and when they came out. Their status is determined by their general certificates almost exclusively. Almost all who are entitled under that service have already applied, and those that come in afterwards would be under the law of 1890, not on account of wounds or injuries contracted or received in the service.

Mr. THOMPSON. The Spanish war survivors do not have any title to pensions under the act of 1890.

Mr. WARNER. Then the decrease would be still greater.

Mr. SULLIVAN. How does it happen that the total number of pensioners is decreased and the amount is increased?

Mr. WARNER. That is because these men are all the time applying for increased pensions. Their disabilities are becoming greater. The men who are drawing $20 a month now will want $24. A man may be going blind, or something of that kind, and he may want $100.

Mr. KEIFER. Do you take into account the special acts?

Mr. THOMPSON. Yes; they are included with the others.

Mr. BROWNLOW. Going back to the question asked by Mr. Sullivan a moment ago, has the increase in the amount paid for pensions come by reason of increases of disability? I notice that in 1904 the average pension was $134.84 and in 1906 it is 136.96.

Mr. KEIFER. That is not much of an increase.

Mr. BROWNLOW. Just about $2 on a pension.

Mr. THOMPSON. It made an annual increase of the roll of $2,615,092 by reason of the increased rate.

Mr. BROWNLOW. That is, by reason of the increased rate and age?

Mr. THOMPSON. Yes, sir.

Mr. SULLIVAN. How much of this increase is attributable to the Pension Office Order No. 78 of a few years ago?

Mr. THOMPSON. You will find in the annual report the number of allowances last year under that order.

OPERATIONS UNDER ORDER NO. 78.

Mr. GARDNER. Do you know whether that increase kept up relatively throughout the year under order No. 78?

Mr. THOMPSON. On page 17 of the Commissioner's annual report is given the number of claims allowed under order No. 78. There you will find the following, beginning at the bottom of page 16:

ORDER NO. 78.

Under date of March 15, 1904, an order was issued to take effect April 13, 1904, providing that in the adjudication of pension claims under the act of June 27, 1890, as amended, it should be taken and considered as an evidential fact, if the contrary did not appear, and if all other legal requirements were properly met, that when a claimant had passed the age of 62 years he would be disabled one-half in ability to perform manual labor and would be entitled to be rated at $6 per month; after 65

years, at $8 per month; after 68 years, at $10 per month, and after 70 years, at $12 per month.

During the fiscal year ended June 30, 1905, the number of claims allowed under the provisions of said order, at the rates specified, was as follows:

Originals.

	$6 per month.	$8 per month.	$10 per month.	$12 per month.	Total.
1904.					
July	912	547	149	255	1,863
August	872	429	150	231	1,682
September	582	317	103	167	1,169
October	959	467	148	230	1,804
November	747	340	112	158	1,357
December	622	296	95	143	1,156
1905.					
January	552	209	65	96	922
February	352	153	58	59	622
March	326	115	30	56	527
April	333	102	24	63	522
May	247	67	25	35	374
June	266	83	30	59	438
Total	6,770	3,125	989	1,552	12,436

Increases.

	$6 to $8.	$6 to $10.	$6 to $12.	$8 to $10.	$8 to $12.	$10 to $12.	Total.
1904.							
July	1,277	528	618	965	1,616	1,517	6,521
August	1,304	417	485	1,039	1,335	1,516	6,096
September	689	247	246	611	663	778	3,234
October	729	264	215	684	629	915	3,436
November	688	214	180	600	478	733	2,893
December	554	139	111	512	333	603	2,252
1905.							
January	509	122	113	458	292	613	2,102
February	406	67	60	398	186	532	1,649
March	437	69	43	399	144	468	1,560
April	410	79	58	416	141	612	1,716
May	290	26	39	263	114	444	1,176
June	486	37	45	481	182	683	1,914
Total	7,779	2,209	2,213	6,821	6,113	9,414	34,549

The total allowances under said order for the fiscal year 1905 were 46,985.

The number of allowances from date of issue of order No. 78 to June 30, 1904, was as follows:

Originals	3,859
Increases	14,768
Total	18,627

Making a total of 65,612 allowances under the order up to June 30, 1905.

It does not show the annual value. Of originals there were 12,436; increases, 34,549.

Mr. GARDNER. You mean men that had never been pensioned before?

Mr. THOMPSON. Yes; that is, originals.

Mr. KEIFER. What page have you got that on?

Mr. THOMPSON. Page 17 of the Commissioner's annual report, beginning at the bottom of page 16.

Mr. GARDNER. The number of pensioners under that law to take

advantage of order No. 78 will increase year by year, will it not, until the whole number reach the age of 70?

Mr. KEIFER. Don't you mean the number will not increase so much as the amount?

Mr. GARDNER. No; the number will increase.

Mr. WARNER. The value will increase more than the number. Probably the deaths during this year will equal the increase. That is, the loss on account of deaths will probably equal the increased amount on account of age.

Mr. KEIFER. Do you increase the number or the amount?

Mr. WARNER. The number of pensioners will increase between the ages of 62 and 70, but when a man gets to be 62 he is tolerably assured for 70. The number of pensioners under order No. 78 will probably decrease, but the amount received by each one will probably increase; and the amount of total loss by deaths will be equalized by the amount of increase. Do you understand?

Mr. KEIFER. Yes.

Mr. BROWNLOW. The last few years show there has been an increase of about $1,000,000 a year on account of increased disability and age.

Mr. THOMPSON. He means increase of annual value of the roll.

Mr. WARNER. The increase has been about a million a year on account of applications under order No. 78.

Mr. THOMPSON. I made a computation of the increase of the roll by reason of order No. 78. The total amount of the increase was $2,263,736 last year. That was the increase to the annual value of the roll. If each of these pensioners, in other words, lived one year at that rate, it would increase the roll by $2,263,736. You see, a great many of these cases would have been allowed had the order not been issued, though perhaps at a lower rate; but they would have been allowed at some rate anyway, except perhaps some at the six-dollar rate. For instance, last year there were 1,552 allowed at $12 a month. That indicated that each of those persons was at least 70 years old; some of these may have been 75 years. They came in under order No. 78, and came in at $12. They would have been entitled to a pension before that order was issued—a pension probably from $8 to $10 a month.

Mr. LIVINGSTON. That is only made so by the order.

Mr. THOMPSON. Oh, no; before that order was issued we gave each applicant $6 if 65 years of age.

Mr. KEIFER. In other words, instead of it being a presumption, the law makes it a fact?

Mr. THOMPSON. Yes; an evidential fact.

Mr. SULLIVAN. The law assumes that there is a presumption of fact that he is disabled at 62 years of age.

Mr. LIVINGSTON. He does not have to show the disability, as I understand it. If he got to be 65 years of age he would be entitled to a pension——

Mr. WARNER. Unless the contrary were shown.

Mr. LIVINGSTON. He might be as strong as Samson, and if he were not examined he would get it?

Mr. WARNER. But if he were shown to be as strong as Samson by evidence or examination he would not get it. The order says it shall be so construed. It is an evidential fact. If a man is drawing a pension at 62 years of age and applies for an increase when he is 65 on

account of his age under the order; if he gets to be 65 years of age when he applies for an increase under that rule as it now stands he must be examined. But if his application is an original application, under order No. 78 he gets his pension upon proof of age and service without an examination. For every increase beyond that, however, he must appear for an examination. If it is an increase he has got to go through a medical examination, and the Medical Examining Board must report that he is entitled to it. In the case of original applications that is not so.

Mr. KEIFER. But, Mr. Commissioner, is not an original application, under order No. 78, one of presumption and prima facie evidence, subject to be met by the fact that the man is capable of physical and manual labor?

Mr. WARNER. If it is an original application, the order says it shall be allowed upon proof of age and service, unless it is proved that he is not physically disabled and is capable of physical or manual labor. That is, the application is allowed unless proof is established to the contrary. The assumption is that he is physically disabled at the age of 70. If he files his claim at the age of 62 under order No. 78, and alleges rheumatism or something else in addition to age, he must go before a medical examining board, and the board may find he is not disabled.

Mr. KEIFER. But if it is left to presumption it will go through all right; but if not, he must be examined.

Mr. WARNER. Yes.

Mr. SULLIVAN. If he tries to prove too much he will fail.

Mr. LIVINGSTON. In other words, he is grafting for old age.

Mr. SULLIVAN. If a man says he is 62 years of age you do not make an examination.

Mr. WARNER. If he says he is 62, and does not aver any other disability, and proves his service, we do not.

Mr. LIVINGSTON. If he came around and said, "I am a strong man," you would have to examine him?

Mr. THOMPSON. It is a question of what shall be considered a ratable disability under the act of June, 1890.

Mr. LIVINGSTON. In other words, if he says nothing, you get him through the gate without an examination?

Mr. KEIFER. I think President Cleveland started the getting.

Mr. GARDNER. Now, going back again to where we were before, under order No. 78, I want to take issue with you a little on a matter of judgment on the probable increase under that order. A man to be 70 years of age to-day must have been 25 years old when the civil war broke out. The average age of all the soldiers was about 21 in the Federal Army.

Mr. KEIFER. I think it was not so high.

Mr. GARDNER. It is a little less than 21—between 20 and 21. The great multitude of them were between 18 and 20 years of age. Those men are to come in yet. The flood under order No. 78 is yet to come, in my judgment.

Mr. WARNER. The trouble is, most of those people are drawing pensions now, regardless of order No. 78.

Mr. KEIFER. They draw it under order No. 78 before they are 70 years of age, too.

Mr. GARDNER. The increase is what I mean.

Mr. WARNER. When it comes to the increase, then order No. 78 has nothing to do with it. Order No. 78 is then out. In effect order No. 78 applies only to original applications. The statute says when there is an application for increase there must be an examination.

Mr. SULLIVAN. You must assume, in order to get a big crop under this order, that there was a large mass of men who enlisted at the age of 17. The 18-year-old fellow would have passed the point of 62 years of age already, and the chances are that when this order was made all the 62-year-old fellows got in at once.

Mr. GARDNER. Will they not be increased when they get up to 65 years of age?

Mr. WARNER. Not unless they are entitled to it under medical examination, unless you change the law.

Mr. GARDNER. And when they get to be 68 will they not then be increased still more?

Mr. WARNER. No, not unless they are entitled to it under an examination; not unless you change the law. There is the weakness of the thing. It was intended to give the increase without examination or anything else.

Mr. GARDNER. That is what we wanted to bring out.

Mr. KEIFER. You put a strict construction on that?

Mr. WARNER. It is a positive, plain enactment.

Mr. KEIFER. I am not complaining of the construction, but——

Mr. WARNER. Of course the President can not make law by proclamation. Here is this section No. 4698½, which says: "Except in cases of permanent specific disabilities, no increase of pension shall be allowed to commence prior to the date of the examining surgeon's certificate establishing the same made under the pending claim for increase; and in this, as well as all other cases, the certificate of an examining surgeon, or of a board of examining surgeons, shall be subject to the approval of the Commissioner of Pensions."

Mr. GARDNER. That is under order No. 78?

Mr. WARNER. No; this is the statute. The order No. 78 did not seem to recognize this at all.

Mr. LIVINGSTON. In other words, it shows the folly of the President trying to legislate on pensions. He did not go far enough.

Mr. KEIFER. As I understand it, there is a statute that authorizes the issuing of that order.

Mr. SULLIVAN. That gives the Commissioner of Pensions the power to make rules and regulations. That is the statute.

Mr. KEIFER. I understand it is applicable only to a certain class of persons.

Mr. GARDNER. You understand, Mr. Commissioner, that under order No. 78, construed in connection with the statute now just read, a man at the age of 62 may be put upon the rolls at $6 without an examination?

Mr. WARNER. Yes; if it is an original application; if he simply avers age as the disability.

Mr. GARDNER. Now, if beyond that he can not be increased on account of age, except by examination for infirmities——

Mr. WARNER. He can not be increased if he delays applying for a pension until he is 70 years of age. If that is his first application, and he shows that he is 70 years of age, and that he served ninety days

and was honorably discharged, he goes right on at $12 a month under order No. 78.

Mr. GARDNER. So that order No. 78 operates only upon original pensioners and upon the first amount allowed, and beyond that the old law obtains?

Mr. WARNER. Yes.

Mr. KEIFER. That is the way you always executed it?

Mr. WARNER. Yes.

Mr. THOMPSON. That was not the practice when the order was first issued.

Mr. WARNER. Not until I took charge.

Mr. THOMPSON. When a man was getting $6 and applied for an increase and alleged that he was 65 years of age, he was given $8 without an examination.

Mr. GARDNER. Without order No. 78?

Mr. THOMPSON. After the order was issued. Commissioner Ware had the idea that section 4698½ did not apply to applications for increase under the act of June 27, 1890. In his opinion section 4698½ of the Revised Statutes, having been a proviso to the organic act granting pensions on account of disabilities incurred in the service, had no bearing upon the act of June 27, 1890. It says—that is, section 4698½ says: "Except in cases of permanent specific disabilities no increase of pension shall be allowed to commence prior to the date of the examining surgeon's certificate establishing the same made under the pending claim for increase;" that is, no increase should be allowed except for specific disabilities until a medical examination was held. Commissioner Ware's idea was, as I remember, that as that was a proviso to an enactment relating to disabilities arising in the service it did not have application to the act of June 27, 1890.

Mr. GARDNER. Then it is a matter of construction by the Pension Commissioner?

Mr. THOMPSON. The Secretary of the Interior had held that it did apply to increases under the act of 1890. This decision was rendered before order 78 was issued.

Mr. GARDNER. Under the Commissioner's construction of the law a man reaching the age of 62 and drawing $6 under the age limit can not be increased except upon examination for disability. Is that right?

Mr. THOMPSON. I think the practice of the Office is to order a medical examination, if disabilities are alleged in addition to age, and then if the claimant is 65 years of age he is given the increase from the date of the medical examination. The medical examination fixes the date of the commencement of the increase. Heretofore the increase to $8 was made to commence from the date of the application.

Mr. GARDNER. I do not think I make myself clear. Here is a man who is not on the rolls. He notifies you, "I am 62 years of age; therefore, under order No. 78, I am entitled to a pension of $6 a month." Now, when he reaches the age of 65, he says, "I am allowed under order No. 78, $8." As I understand it, he sends in his application and you give an order to him to go before the board and be examined. Unless the medical examination reveals disabilities his age counts him nothing. Is that right?

Mr. WARNER. Hardly that; in fact it is just the other way. You order him before the medical examining board and the examining board examines him and reports. Now, unless the report of that

examination shows that he is not disabled to that extent by age—unless it shows to the contrary, he is granted an increase of pension. But if the report of the medical examining board shows that he is not disabled, although he is 65 years of age and is getting $6 a month, he will not be increased. But he will get his increase unless the contrary appears. If the contrary does appear in the report of the medical examining board, he is out.

Mr. GARDNER. Let us go a step farther. Let us suppose he has reached the age of 68 and the board will hold that he is entitled to an increase; or suppose he is 70 and the board will hold he is entitled to increase. A man may be put upon the pension rolls on account of age at 62 years of age at the rate of $6 under your rule?

Mr. WARNER. Yes.

Mr. GARDNER. And when he is 70 years of age, your rule is he can not get more than $6 a month unless the disabilities warrant it?

Mr. WARNER. The order contemplates that age is an infirmity—that age of itself diminishes a man's ability to earn his living by manual labor to a certain extent. Under order No. 78 that is an evidential fact. If the report of the board, however, shows to the contrary, he will not get an increase. It would be the same as if he were 40.

Mr. GARDNER. I would not put it 40.

Mr. WARNER. If the report of the medical examining board shows that he is as good at 65 as at 60, for example, he will not get an increase.

Mr. BROWNLOW. Suppose a man who when he was 62 years of age was put on the roll at $6 is ordered before the medical examining board when he claims an increase because he has reached the age of 65, and you find he is ruptured to the extent of $6 a month. According to your medical rating in the Bureau what would you give him on account of age, providing he is 65 years of age and has a rupture to the extent of $6 a month according to the rating of the Bureau in other cases equal to $6 a month. How much would you allow him for being 65 years of age?

Mr. WARNER. That is according to the report of the board as to the effect of age upon him. He would be entitled to a rating on account of rupture, to start with, and this age—this additional disability by reason of age—would be added in to his rating, taking all his disabilities into consideration—rupture, or loss of arm, or loss of leg, or age, or anything else.

Mr. LIVINGSTON. As I understand that proposition, suppose a case where a claimant is between the ages of 62 and 65. If he does not become any more disabled at 65 than he was at 62 he would not get an increase, but if there was an increase of disability he would get the increase of pension?

Mr. WARNER. Yes.

Mr. GARDNER. Now, I am not entirely clear on this matter yet. As I understand the ruling of Commissioner Warner, the only advantage to the pensioner under order No. 78 over his comrades is to put his name on the roll at a given age, at which he applies. Beyond that, along with the rest, he must take his medical examination regardless of his years?

Mr. WARNER. Yes; that is as I understand the law.

Mr. KEIFER. Now, I want to press that a little further——

Mr. WARNER. Of course, Mr. Chairman, you understand that age is always considered in deciding on the disability. Notwithstanding

you must eliminate age from the consideration from the ages of 62 to 65, the medical examining board will take into consideration the fact of that increase of age of three years.

Mr. GARDNER. Here is the injustice of that law. If you will allow me to say: If a man is not entitled at 70, under an arbitrary construction of the law, to more than what he is entitled to at 62——

Mr WARNER. You must amend your law so as to eliminate that thing.

Mr. LIVINGSTON. That is where the grafting comes in that I suggested awhile ago.

Mr. KEIFER. I think we did not all understand this alike; at least I am not sure that the Commissioner will be satisfied with his own answer. Let me see if I can help him. I understand after a man has been allowed $6 purely on account of being 62 years of age, if at 65 years of age he applies for an increase he must go before a medical examining board and will be allowed on account of age $8 a month unless the examining board shows by its report that he is free from any physical disability. He has to negative that. It is a mistake to presume that he will not in every case get an increase on his second application on account of increase of age, for he will get it unless the report of the board that examined him shows that he is not entitled to it under the order.

Mr. WARNER That is the way I endeavored to have it understood. The contrary must appear.

Mr. KEIFER. If the contrary does not appear that a man is physically able to perform manual labor, he gets the increase on account of age.

Mr. GARDNER. Why should he be put on at all, then, except by medical examination?

Mr. KEIFER. Because age is a waiver of the medical examination in the first instance, and in the second and third, and so on, unless the medical examination shows that he is not disabled by reason of age, and unless that examination overcomes the prima facie case made simply on account of age under that order. Is not that right?

Mr. WARNER. Yes.

Mr. LIVINGSTON. There is a waiver in the first place. He goes in without examination. If at the age of 65 the examination shows that he is thoroughly competent to make a living, he does not get his increase. At 70, if the report of the board says he is still competent to make a living, he does not get any increase; and both of those examinations show that there was a fraud perpetrated in putting him on at 62 years of age.

Mr. SULLIVAN. That is just it.

Mr. KEIFER. That is a discussion rather than a demonstration.

Mr. THOMPSON. The date of filing an original claim fixes the date of commencement. That is provided for in the act of June 27, 1890, but under section 4698½ he must be examined, and the date from which the increase shall commence is fixed from the date of the examination, or from the date of the examining surgeon's certificate. In original cases, the date of filing application fixes the date of commencement; in increases, the date of the surgeon's certificate fixes the date of commencement of the increase.

Mr. WARNER. That compels an examination before there shall be an increase at all.

Mr. LIVINGSTON. The law absolutely shuts the Commissioner up, here, as to that examination. You have to change your law before you can give the people the privilege of receiving a pension because they are of the age of 65 or 70; that is, to do without an examination in the case of originals.

Mr. WARNER. Yes, I am foreclosed by that statute.

Mr. KEIFER. Can you give the number of the section of the statute under which it is claimed authority is given to issue this order No. 78?

Mr. WARNER. Can you give that statute, Mr. Thompson? I can not.

Mr. THOMPSON. That is given under the act itself.

Mr. KEIFER. I am very new in it, and so I am not very confident.

Mr. SULLIVAN. A man reaches the age of 62 and applies for a pension without medical examination. It is granted at $6 a month. When he reaches the age of 65, he believes, we will say, that some disability has grown up which originated in the time of service. He now applies for a medical examination, so that he will get an increase of pension, namely, $8 a month. The medical examination takes place. It is discovered that he has no physical disability.

He is not penalized at all. The original pension of $6 a month, which was obtained fraudulently, still obtains. The examination at the age of 65 shows, for instance, that the man is still sound and capable of earning a living, and that when the examination was held when he was 62 he must have been still sounder and more capable.

Mr. WARNER. Say, a man has been granted a pension under that age-limit order under the assumption or presumption that his age disabled him, and applies for an increase and goes before a medical examining board, and the examining board shows by its report that he is not entitled to a pension on account of his age, if you can imagine such a case, then the question comes up whether he should not be dropped. That is a question for the Commissioner to decide.

Mr. LIVINGSTON. If you obey the law, you ought to drop him?

Mr. WARNER. If you can find a man is not legally drawing a pension you can drop him. It is on account of that clause, "unless the contrary appears."

Say that he comes in under the order on account of age. The order says, "unless the contrary appears." He comes in and does not aver anything but age. It is assumed that he is not alleging anything except age. He then applies for an increase and is sent under the practice to a medical examining board, and the medical examining board finds that he did not lose a leg or an arm, as the case may be, or that his age did not render him less able to earn a living by manual labor, etc. Then the question is whether you should not cut him off the same as if he was drawing a pension for the loss of a leg which he did not lose or the loss of an arm which he still has.

Mr. SULLIVAN. Have you had any cases of men who have applied for an increase at 65 years of age? Perhaps you could not have had cases like that. Very well——

Mr. WARNER. Yes; we have had cases where we refuse to increase on account of the conditions shown by examination, and refuse the increase when they arrive at the age of 65 and aver that they suffer from disabilities other than age, and go before the board and the board reports there is nothing the matter with him.

Mr. KEIFER. That was because of your medical testimony in the case?

Mr. WARNER. Yes; he inadvertently and unadvisedly did that. His attorney did not understand, and he averred something other than age.

Mr. THOMPSON. Mr. Chairman, the question was asked me a while ago as to the authority to issue order No. 78, to say that the fact of age was to be considered as a factor in rating. That is under the act itself. It says:

"All persons who served ninety days"——

Mr. KEIFER. What is the act?

Mr. THOMPSON. That is section 2 of the act of June 27, 1890. It says:

SEC. 2. That all persons who served ninety days or more in the military or naval service of the United States during the late war of the rebellion and who have been honorably discharged therefrom, and who are now or who may hereafter be suffering from any mental or physical disability or disabilities of a permanent character, not the result of their own vicious habits, which so incapacitates them from the performance of manual labor as to render them unable to earn a support, shall upon making due proof of the fact, according to such rules and regulations as the Secretary of the Interior may provide, be placed upon the list of invalid pensioners of the United States, and be entitled to receive a pension not exceeding twelve dollars per month and not less than six dollars per month, proportioned to the degree of inability to earn a support; and in determining such inability each and every infirmity shall be duly considered, and the aggregate of the disabilities shown be rated.

That is from the act of June 27, 1890, as amended by the act of May 9, 1900. I have quoted from the amended act.

Mr. LIVINGSTON. Right there: That does not say a man can get in without a disability.

Mr. THOMPSON. If he is suffering from any physical or mental disability which incapacitates him from the performance of manual labor, that act says that he shall be given not less than $6 a month. We must determine by regulations what shall be considered as ratable disabilities under this law.

Mr. LIVINGSTON. The law tells you how to ascertain that, by the Board of Examiners.

Mr. KEIFER. Under that law the Secretary of the Interior may issue rules and regulations. That was done under the Administration of President Cleveland, I recollect.

Mr. LIVINGSTON. That law does not intimate that. It does not say it. You can not deduce that from it.

Mr. THOMPSON. If a man has a hernia he could prove it without a medical examination, and it seems to me we could give a pension under the law of 1890 for that without a medical examination.

Mr. LIVINGSTON. Not when the law lays down a prescribed method by which a disability can be established.

Mr. WARNER. Do you not know, Mr. Livingston, there is no appeal from allowance of a pension?

Mr. SULLIVAN. The statute authorizes the making of rules and regulations. The result in practice has been that they have dispensed with an examination if a man reached the age of 62.

Mr. WARNER. It only says what the effect of certain evidence under such circumstances shall be. We assume the fact that a man at the age of 62 is disabled. Order No. 78 says we shall so conclude from that testimony, unless the contrary is proven.

Mr. KEIFER. I want to say that that statute is the one that President Cleveland cited in 1894, which authorized the issue of just such an order as this, dispensing with the matter of examinations and laying

down rules and regulations which the Commissioner of Pensions may prescribe.

Mr. THOMPSON. Before order No. 78 was issued I have seen cases admitted when a man was 75 years of age without an examination. Order No. 78 did not start that practice.

Mr. LIVINGSTON. I am talking about conformity to the rules and regulations prescribed.

Mr. GARDNER. I am convinced that the country has not the idea that we are getting here this morning. If a man is 72 years of age, under order No. 78 he may be thoroughly sound and actually earning his own living, but automatically that order gives him $12 a month.

Mr. WARNER. Yes; unless the evidence shows something contrary to the assumption that he is disabled.

Mr. GARDNER. Under this order, regardless of his physical condition, he gets $12 a month. I want to get the operation of this order. Is that it?

Mr. WARNER. Yes.

Mr. KEIFER. I do not think it is regardless of his physical condition but it is regardless of whether he is physically disabled or not, because his physical condition does not appear to the Department.

Mr. GARDNER. I simply submitted it to the Commissioner for his ruling. But let us go back again. If it is certified to you, Mr. Commissioner, that a man is 75 years of age, under that order you have no discretion but to put him on the rolls at $12 a month?

Mr. WARNER. If he proves his age and service and honorable discharge, that establishes his disability unless there is evidence in there to the contrary.

Mr. GARDNER. If a man goes on at 62 years of age at the rate of $6 a month and lives to be 70 years of age, and is a well man and able to earn his living, he can not get $12 a month?

Mr. WARNER. No: that is not correct. The extent of his disability will be passed upon when the evidence is all in. It is not simply an ability to earn a living.

Mr. THOMPSON. It is by manual labor.

Mr. WARNER. It is the extent of his disability to perform manual labor. A man can earn a living with one hour's work a day, perhaps.

Mr. GARDNER. No, the point is this: I was on the floor in the House when the point was discussed, and you were, Colonel Livingston, and there was no difference of opinion, as I recall, but that when a man was 65 years of age he would get $8 per month, and when he was 68 he would get $10, and when he was 70 he would get $12 a month—in other words, that the law was automatic in its operation.

Mr. LIVINGSTON. We did not understand the effect of order number 78 when we discussed it at that time.

Mr. GARDNER. Am I right in that impression?

Mr. LIVINGSTON. Yes.

Mr. GARDNER. At that time the Mexican soldiers were all on the roll at $12 a month, regardless of age.

Mr. KEIFER. That had nothing to do with an examination.

Mr. GARDNER. I am simply showing the spirit of the House; the country did not understand that.

Mr. WARNER. They did not think about this section of the statute at that time; I wish that could be amended so that it would not repeal the law of 1890; I wish that could be amended so that no examina-

tions would be required under order No. 78. Instead of giving $12 a month to every man, woman, and child, let order No. 78 stand as a service pension.

Mr. LIVINGSTON. Then you would have two propositions before the country, a disability pension and a service pension?

Mr. WARNER. Yes.

Mr. LIVINGSTON. You would make age the basis of a service pension?

Mr. WARNER. Yes.

Mr. LIVINGSTON. That would be a plain proposition, and the country would understand it, and nobody would object to it.

Mr. GARDNER. What is that, Colonel?

Mr. LIVINGSTON. Let the disability pensions stand, I say, as they now stand, but let all service pensions begin at the age of 62; and when a pensioner reaches the age of 65 let his pension be increased to $8, and when he reaches 68 let it be $10, and at the age of 70 let it be $12, without examination.

Mr. WARNER. I believe that would satisfy the people.

Mr. LIVINGSTON. And everybody would understand it.

Mr. BROWNLOW. You can not amend this bill.

Mr. LIVINGSTON. Not without incurring a point of order. But I think the House would permit a clause of legislation of that kind.

Mr. GARDNER. I am sure that was the spirit of the House at the time.

Mr. KEIFER. The House controverted it on the ground that Mr. Livingston put, that it was not to be by the authority of the President or the Secretary at all.

Mr. LIVINGSTON. And, gentlemen, if you will excuse me, that will take out the appearance of fraud and graft. This law opens the door on the pensioner at 65, and you can see whether or not he ought to have had an examination at 62. My way would eliminate all that appearance of fraud and would say absolutely that at 62 and at 65 and at 70 you would get it without examination.

Mr. GARDNER. Yes, that puts the House construction on the law.

Mr. LIVINGSTON. There is another thing in it, too. It takes away from us the suspicion of doing crooked things. It was not the intention of the House to do anything crooked in that pension matter. But you see you have done it apparently in connection with this law.

Mr. GARDNER. I would like to ask if Commissioner Ware did not construe that law as I have intimated it, that age itself operated?

Mr. LIVINGSTON. No. Mr. Thompson says that Section 4698½ did not apply, but to get around it we said it did not apply here. That was the crooked piece of business.

Mr. GARDNER. I would like to have your statement of that, Mr. Thompson, in the record.

Mr. THOMPSON. There was never any written order upon that, but Commissioner Ware issued verbal instructions after this order was issued. Every man who applied for an increase, if he was getting $6 and 65 years of age, was increased to $8, if the contrary did not appear. If he was 68 years of age and getting only $8, he should be given $10 from the date of application, without a medical examination. I know there was no order issued, but just verbal instruction to his chiefs of division.

Mr. SULLIVAN. Have you an idea of how much that would increase the total amount of pensions—the plan suggested by Mr. Livingston?

Mr. THOMPSON. The amount allowed under that order last year was $2,263,736. But in the last six months the cases allowed under that order have amounted to about $500,000. They have increased the annual value of the roll by that much.

Mr. KEIFER. Most of these men are on the roll somewhere now, so that the increase would be hard to calculate. There is a dying off, and it would be hard to tell.

Mr. THOMPSON. Yes; the original applications that have been adjudicated under that order in the last six months are only 2,243 in number.

Mr. LIVINGSTON. This service pension ought to eliminate second cousins and great aunts and uncles and all that sort of thing. It should be a service pension pure and simple.

Mr. GARDNER. What has order No. 78 to do with uncles and aunts and cousins?

Mr. WARNER. We were just talking jocularly.

Mr. LIVINGSTON. What is given just to soldiers and their wives and children under 16 years of age. Why not just make a service pension? There is no wife or daughter who can take advantage of order No. 78.

Mr. WARNER. No; that was just talk that I put in about cousins and aunts and uncles.

Mr. BROWNLOW. There is nobody, Colonel Livingston, entitled to a pension except as an invalid, or as a dependent father or mother, or widow, or minor child.

Mr. KEIFER. We are making progress, of course; but, taking that first page of the bill before us, I suggest that we insert $139,000,000 near the bottom of the page.

Mr. LIVINGSTON. They ask for $140,000,000.

Mr. WARNER. I think we can get along with $139,000,000.

Mr. THOMPSON. We made our estimates early in the year, before the statistics came in that we now have.

Mr. WARNER. I think we can get on with $139,000,000, and still probably return some of the money. When that estimate was made it looked as if it would be fully that, namely, $140,000,000. For fifteen years the amount has been averaging about $140,000,000.

SALARIES OF PENSION AGENTS.

Mr. KEIFER. On page 4 is the item for salaries of 18 agents for the payment of pensions, at $4,000 each, blank thousand dollars. What should that be?

Mr. THOMPSON. $72,000.

Mr. LIVINGSTON. For fees and expenses of examining surgeons you ask this year for $800,000. You asked last year for $700,000. Do you want the full estimate? That is for medical examinations.

Mr. KEIFER. We are now on the item for salaries of 18 agents for payment of pensions at $4,000 each. That is a matter of calculation. That is $72,000, is it not?

Mr. WARNER. Yes. I have nothing to do with that.

Mr. GARDNER. I would like to ask the Commissioner what is the necessity of having 18 pension agencies?

Mr. WARNER. None whatever. They should be reduced to six. That could be done by an Executive order.

Mr. KEIFER. That could not be done in this bill?

Mr. WARNER. No, sir; as long as the agencies are continued at 18 in number, the appropriation is necessary.

Mr. GARDNER. I would like to know the necessity here of having, for instance, two in the State of Pennsylvania and two in the State of New York, when those two pay less than a single agency in Ohio and much less than the single agency at Topeka, Kans.

Mr. WARNER. If I had the power I would decrease the number of agencies in the United States to six.

Mr. KEIFER. Who can do that?

Mr. WARNER. The President can do it by an Executive order.

Mr. KEIFER. You had better appeal to him.

Mr. WARNER. There is one down there in Knoxville, Tenn., among the hills and among the bramble-bushes and so forth, and here if you were to abolish it, Mr. Brownlow would immediately get up and take on about it. [Laughter.]

Mr. BROWNLOW. The mountains there in eastern Tennessee furnished more soldiers to the Union Army than any Congressional district in the United States.

Mr. WARNER. The Chicago agency could take the place of five or six out there in the West.

Mr. LIVINGSTON. Excuse me, gentlemen, I must go into the House.

Mr. GARDNER. We will get through presently.

Mr. BROWNLOW. Why not move to report the bill?

Mr. LIVINGSTON. Yes; I move then that the bill be reported.

Mr. GARDNER. If we put in an amendment as to order No. 78 we will have to take that up carefully. Take, for instance, the pension agencies. Here Boston, Mass., disburses $7,000,000; Augusta, Me., $2,000,000. What is the use of paying a man $4,000 in Augusta to pay out $2,000,000, when the Boston man can do it just as well? There is no need of a pension agency at Augusta.

Mr. WARNER. No; about 12 of them ought to be knocked out.

Mr. GARDNER. Take also the case up at Concord, N. H. Boston could pay it just as well. There is no earthly need for that expense.

Mr. WARNER. No; it is only twenty-four hours from here to Chicago. You can get a draft from Chicago to Washington in twenty-four hours.

Mr. KEIFER. There is more speed in going from Washington to Chicago than there is in going from Knoxville to some one of the rural counties down there in Tennessee, for example. You have got to go to the rural delivery offices, you know, and that takes some time when you are not within the reach of a railroad.

Mr. LIVINGSTON. I want to suggest this, Mr. Chairman, if you please, that we put a little footnote here under the agencies for the payment of pensions to the effect that we recommend that the agencies be cut down to 6.

Mr. WARNER. Six is not too big a cut.

Mr. THOMPSON. President Cleveland issued an order cutting the agencies down to 9. As the law now stands, the President is authorized to determine the number of agencies.

Mr. SULLIVAN. I offer it as a motion that the number of agencies be reduced from 18 to 6, and that the amount appropriated for the payment of their salaries be reduced from $72,000 to $24,000.

Mr. TAWNEY. Would not that be an indication to the President that Congress deemed no more than 6 as necessary, and that rather than

they be continued without appropriation, as authorized by law, they should be discontinued?

Mr. THOMPSON. The President can reduce the number without any legislation at all.

Mr. TAWNEY. Why would it not be a good idea, Mr. Chairman, to see the President and confer with him about this and ascertain if he will reduce the number, and advise him that we will appropriate for the number to which he reduces them. As this will not take effect until July 1 next, there would be time for that to be done and the business could be provided for.

Mr. LIVINGSTON. I think the President ought to have our notion about it.

Mr. SULLIVAN. I move, Mr. Chairman, that the chairman of this subcommittee be requested to see the President and discuss the subject with him.

Mr. TAWNEY. I think we ought not to do this until we know that he will agree with us in the reduction. Then we can exercise our power and put a limitation upon the number of agencies and abolish the extra ones. We do not want to trespass upon the prerogative of the-other-end-of-the-Avenue.

Mr. KEIFER. He is only acting under our law.

Mr. TAWNEY. I know, but inasmuch as he has that discretion and the matter has never been called to his attention by Congress, I think courtesy would prompt that we confer with him; and if he by an Executive order will limit the number, we can then appropriate for that number.

Mr. GARDNER. Do you change your motion, Mr. Sullivan?

Mr. SULLIVAN. Yes; I will withdraw my motion.

MONDAY, *January 22, 1906.*

ADDITIONAL STATEMENT OF MR. VESPASIAN WARNER, COMMISSIONER OF PENSIONS, ACCOMPANIED BY MR. A. H. THOMPSON, CHIEF OF FINANCE DIVISION, PENSION BUREAU.

SALARIES OF PENSION AGENTS (CONTINUED).

Mr. GARDNER. Gentlemen, I want to say first, in regard to the instructions of the committee on last Friday, that the President was waited upon on Saturday by the Commissioner of Pensions and myself in reference to the consolidation of the pension agencies, as discussed in this committee on Friday, and my impression was, and indeed he said, that he would take up the matter; he could not do it now, he was pressed too much; but later on, right after adjournment, he would take up the matter with the Commissioner of Pensions and give to the whole subject very careful consideration, with a view to reducing the number of pension agencies.

I make that statement as a report.

Mr. KEIFER. The result of that is, Mr. Chairman, that we will go ahead and make the appropriation just as usual?

Mr. GARDNER. Yes, sir.

I remember that when we stopped on account of that proposition

a few days ago, there was a motion pending before the subcommittee, offered by Mr. Livingston, to report the bill favorably to the whole committee.

Mr. KEIFER. Yes; there was a proposition here, too, that we wanted to put in at the proper place the proper amount of money.

Mr. TAWNEY. Before action was taken on that other motion there was an amendment offered by General Keifer.

FEES AND EXPENSES OF EXAMINING SURGEONS.

Mr. KEIFER. Yes; at the proper place I wanted to add the words: "And provided further that age is a permanent specific disability within the meaning of the pension laws."

That is all there is of it. At what place should that go in? Can you get it there, Mr. Commissioner?

Mr. TAWNEY. That ought to be an amendment to some specific section of the bill.

Mr. THOMPSON. I think perhaps it ought to go on at the end of the item for medical examinations.

Mr. KEIFER. Yes, that would be a good place for it.

Mr. COURTS. At the end of the proviso which requires an accounting for the expenditure of the money?

Mr. TAWNEY. Yes; it relates to the entire appropriation. It logically comes in there.

Mr. KEIFER. Yes; just add it after the word "separately," on page 2 of the bill, near the top.

Mr. SULLIVAN. Does that change the law?

Mr. KEIFER. I do not know whether it does generally or not, but it does fix the regulation and makes a change to that extent absolutely from the present law.

Mr. GARDNER. On page 3 of the bill there is a proviso "That no pension attorney, claim agent, or other person shall be entitled to receive any compensation for services rendered in securing the introduction of a bill or the passage thereof through Congress granting pension or increase of pension; and any person who shall, directly or indirectly, contract for, demand, receive, or retain any compensation for such services shall be deemed guilty of an offense, and upon conviction thereof shall, for each and every such offense, be fined not exceeding five hundred dollars or imprisoned not exceeding two years, or both, in the discretion of the court."

Under order No. 78 there is no necessity, if this amendment passes, for the employment of an attorney.

Mr. TAWNEY. No; no necessity for his employment. As I said a moment ago, privately, to the chairman of the subcommittee, that might possibly work a hardship in some cases. Most of the old soldiers, or all of them, have become more or less accustomed to corresponding with their attorneys. Now, if they would send an application to an attorney for an increase on account of age and he would write back and say he was not allowed to act in the matter, the pensioner would think he was in some trouble.

Mr. KEIFER. The Commissioner says they do not need an attorney.

Mr. TAWNEY. If the Commissioner notifies these men that they do not need any, that might obviate the difficulty.

Mr. WARNER. We will put in a circular in writing to any such

claimants that it is unnecessary for them to employ an attorney for the next increase, and that if they will notify us we will send them a blank application, and that all they have to do is to fill it out and show their age.

Mr. KEIFER. So that they do not even have to swear to that?

Mr. WARNER. Yes.

Mr. KEIFER. Now, Mr. Chairman, I would put this clause in after the word "separately," on page 2: "And provided further, That age is a permanent specific disability within the meaning of the pensions laws."

Mr. SULLIVAN. What age?

Mr. KEIFER. The age is fixed by the order——

Mr. TAWNEY. By order No. 78.

Mr. KEIFER. The age of 62, 65, 68, and 70.

Mr. THOMPSON. Yes.

Mr. KEIFER. At 62 the rate is what?

Mr. THOMPSON. $6.

Mr. KEIFER. At 65 it is what?

Mr. THOMPSON. $8.

Mr. KEIFER. At 68?

Mr. THOMPSON. $10.

Mr. KEIFER. And at 70?

Mr. THOMPSON. $12.

FEES OF PENSION ATTORNEYS.

Mr. GARDNER. Mr. Commissioner, what do you think of this amendment, while you are here? Then pension agents are exceedingly hungry after the pensioners' money. About three-fourths of the way down page 3 is this proviso, which I read a moment ago, now amended: "And provided further, That no pension attorney, claim agent, or other person shall be entitled to receive any compensation for services rendered in securing the introduction of a bill or the passage thereof through Congress granting pension or increase of pension under order No. 78; and any person who shall, directly or indirectly, contract for, demand, receive, or retain any compensation for such services shall be deemed guilty of an offense, and upon conviction thereof shall, for each and every such offense, be fined not exceeding five hundred dollars or imprisoned not exceeding two years, or both, in the discretion of the court.

That is the proposed amendment.

Mr. WARNER. I should think that would be very good. There is no necessity for a pension attorney in that at all.

Mr. KEIFER. Not even in the case of originals, when they have to make proof of service, honorable discharge, and all that?

Mr. WARNER. No. We get that all at the War Department. All they have to prove is their enlistment and service for ninety days, their honorable discharge, and then their age. That can be furnished at the War Department in twenty minutes.

Mr. KEIFER. Will they be able, however, to get up the necessary papers in the proper shape, and have them sworn to, and all those things?

Mr. THOMPSON. Any notary public can do that.

Mr. KEIFER. Yes; but they do not all know.

Mr. TAWNEY. The Commissioner says that he will notify them in a circular, and they will notify the Department.

Mr. KEIFER. But he says he will notify them of the increase after the pensions are granted. That would require something to be done in the first instance. That is the point I make. I have no objection to it if it will work all right.

Mr. WARNER. If they want to appoint an attorney, they can. I do not believe I would change the statute and prohibit them to employ an attorney. In some cases a man—say a blind man, or a very ignorant man, or a man of very feeble mind—might find it necessary to employ an attorney.

Mr. KEIFER. If you say it shall not be necessary in case of increase under the order to employ an attorney, it might embarrass such men as you mention?

Mr. WARNER. Yes; that is all right.

That is not an act of Congress, or a law; it is simply a rule of evidence. The age order says that it has been demonstrated as an evidential fact that when the claimant arrives at a certain age he is disabled to a certain extent.

Mr. KEIFER. Why not say "receive any increase of pension on account of age?" Why not strike out the words "order No. 78?"

Mr. TAWNEY. When he receives an increase except by that order?

Mr. KEIFER. Yes. Why not say, "receive any increase of pension on account of age," and strike out the word "order?"

Mr. WARNER. Yes; that would do.

Mr. GARDNER. Then the Commissioner will be flooded with inquiries, "What does this mean?" A man might say, "I want an increase on account of age; on account of general infirmities."

Mr. WARNER. I think I would let that alone if I had anything to do with that.

Mr. KEIFER. I do not believe in putting that order in there.

Mr. BROWNLOW. It is subject to a point of order.

Mr. GARDNER. My point is to cut off these pension attorneys who are living off the old soldiers.

Mr. WARNER. The old soldiers themselves are getting pretty cute, too. They are kicking about the attorneys. I would let that stand as it is. It is only $2 on an increase, and a fellow will not give that up unless it is necessary and unless the service is rendered.

AGE IS A SPECIFIC DISABILITY.

Mr. GARDNER. It has been moved and supported that the following amendment be inserted on page 2 of the bill, beginning after the word "separately:" "And provided further, That age is a permanent specific disability within the meaning of the pension laws." Are there any remarks? As many as are in favor say aye; opposed, no. The ayes seem to have it: the ayes have it.

Mr. WARNER. That will save $250,000 a year.

Mr. SULLIVAN. How?

Mr. WARNER. Every application for increase must now go before an examining board composed of three doctors. Each doctor is entitled to a fee of $2 for the examination. All of them do not attend the examination, it is true, but instead of paying $6 for each examination, sometimes it is $5. They all get on the pay roll if they can. But say

it is $5 for each examination. That will be $250,000 on a little amendment. That will save the Government at the lowest estimate that much—$250,000 a year. It will save examinations and fees, and it will save clerical work in the Bureau besides.

Mr. SULLIVAN. At what age will that apply?

Mr. WARNER. At 65, at 68, and 70.

Mr. SULLIVAN. Not to 62?

Mr. WARNER. No.

Mr. SULLIVAN. Those are the ages at which increases can be asked under the present law?

Mr. WARNER. When they get to be 70 that ends it.

Mr. SULLIVAN. Suppose a man does not apply at the age of 62; suppose he neglects to do so, and he reaches the age of 65, and sends in an application for pension, will he now be entitled to receive $8 a month on proof that he served ninety days in the war, was honorably discharged, and is now 65 years old?

Mr. WARNER. Yes, the first shot out of the box. There is no examination then.

Mr. SULLIVAN. And if he does not apply until he is 68 or 70 it would be the same?

Mr. WARNER. Yes.

Mr. SULLIVAN. So that those men who get in at 62 and do ask for increase at the age of 65, or 68, or 70, respectively, have to take an examination?

Mr. WARNER. Yes; and it costs the Government, conservatively, $250,000 a year. Those upon the medical examining board usually say, "Those old fellows are entitled to increase when they are 65 years of age." I know I am not myself half as good for manual labor as I was when I was 40. I am a big sight smarter than I was then, but——

Mr. KEIFER. That is a matter of judgment to some people. [Laughter.]

Mr. SULLIVAN. You say that will save $250,000 a year in the medical examinations at these three ages, 65, 68, and 70?

Mr. WARNER. Yes.

Mr. SULLIVAN. Will it not increase the total amount paid for pensions?

Mr. WARNER. I do not think it will.

Mr. SULLIVAN. Were not some of the men rejected at the ages of 65, 68, and 70 when they applied for increase?

Mr. WARNER. Perhaps there may be a case occasionally when a medical examining board reports that a man is not disabled at all, but I doubt it.

Mr. SULLIVAN. Is it not possible to get from the files of your Bureau exact information on that subject?

Mr. WARNER. It is possible, but it is a question of time. I do not know how long it will take.

Mr. SULLIVAN. Is is not worth while, when we are reporting a law to save $250,000, to report also the number of applications for increase at the ages of 65, 68, and 70 which have been rejected in the last two years?

Mr. WARNER. If the committee wishes that information it can be obtained.

Mr. SULLIVAN. I want to suggest this: Whether these examinations

have disclosed in the last five years the fact that men have been rejected for increase at the ages of 65, 68, and 70?

Mr. THOMPSON. This order was to take effect April 18, 1904.

Mr. SULLIVAN. And prior to that time a man had to take an examination before he could get an increase?

Mr. WARNER. Yes.

Mr. TAWNEY. Prior to that date a pension was not allowed on account of age?

Mr. WARNER. A medical examining board would examine a man and ascertain the amount or degree of his disability to earn his living by manual labor. It makes no difference whether it is by loss of an arm or a leg or any other particular thing. They take into consideration his age and what he is able to do. The idea of the Government is to help these old fellows that are unable to help themselves.

Mr. TAWNEY. My idea was that prior to the issuance of the order No. 78 a man could not, as a matter of right, obtain a pension on the ground of age alone.

Mr. WARNER. Order No. 78 makes it an evidential fact. Mr. Thompson tells me that at the age of 75 it could have been done, too.

Mr. SULLIVAN. Could they get a pension then?

Mr. WARNER. Not that I ever heard of before, speaking for myself.

Mr. THOMPSON. They got $12 per month prior to this order.

Mr. WARNER. Order No. 78 says that a man shall be presumed to be disabled when he arrives at a certain age, unless the contrary appears.

Mr. GARDNER. In Mr. Cleveland's Administration it was ruled that a man at 65 was half disabled and at 75 totally disabled within the meaning of the law, and could receive $6 at the age of 65 and $12 a month at the age of 75?

Mr. THOMAS. Yes. The practice was to give $6 a month at the age of 65, and $12 a month at the age of 75.

Mr. GARDNER. On account of age?

Mr. THOMAS. Yes. Those who did not apply until after they reached the age of 75 were given the $12 a month without an examination, when it was an original case.

Mr. SULLIVAN. When was the order No. 78 made?

Mr. THOMPSON. In March, 1904.

Mr. SULLIVAN. So that rule as to no examination took thirteen years off? That is, prior to that a man had to be 75 years of age before an examination could be dispensed with?

Mr. GARDNER. It took off from 65 to 75.

Mr. SULLIVAN. I understood that prior to the time when order No. 78 was promulgated a man of 65 or 68 or of 70 would have to take an examination when he applied originally for pension on the ground of age.

Mr. TAWNEY. Prior to the issuance of order No. 78?

Mr. SULLIVAN. Yes.

Mr. TAWNEY. I do not think so.

Mr. SULLIVAN. I would like to find out what it is. As the result of this cross fire here I have come to this conclusion—and I want to find out whether or not I am right: Prior to the issuance of order No. 78 a man would have to undergo an examination before he could obtain a pension. In other words, a man of 65, 68, or 70, who applied for a

pension, would have to prove his service and his honorable discharge and his age, and would also have to be examined by a medical examiner.

Mr. THOMPSON. Yes, I think that was the practice. I do not recall otherwise, except that the office did at one time, after the issuance of that 75 years of age order, grant an increase after a man arrived at the age of 75. But when the Secretary of the Interior passed upon that, he overruled that practice and decided that section 4698½ applied to all increase cases of that kind.

Mr. KEIFER. But not at the age of 75?

Mr. THOMPSON. If he was already on the roll the Bureau increased him without examination. But that practice, I say, was overruled by the Secretary of the Interior.

Mr. KEIFER. Suppose he applied originally at 75?

Mr. THOMPSON. He was given a pension without examination.

Mr. SULLIVAN. Under what order was that as to the age of 75?

OPERATIONS UNDER ORDER NO. 242.

Mr. THOMPSON. That was under order No. 242.

Mr. KEIFER. What was the date of it?

Mr. THOMPSON. September 9, 1893.

Mr. SULLIVAN. That was Commissioner Lochren's order?

Mr. THOMPSON. Yes.

Mr. KEIFER. That was in Mr. Cleveland's time?

Mr. THOMPSON. Yes. And the order said nothing about a medical examination. It simply fixed the age of 75. You understand that order No. 78 says nothing about examining. This was a practice that grew up under order No. 78.

Mr. GARDNER. As a matter of fact, under order No. 242 a man was put on the roll at the age of 75 without medical examination if he was not previously on the roll?

Mr. THOMPSON. Yes; that was the way.

Mr. SULLIVAN. And if he was already on the roll and applied for an increase of pension he would have to take an examination? That part of the law has not been changed, and the Commissioner now suggests that the law be changed so as to dispense with examination in these cases, where the claimants are 65, 68, and 70.

Mr. GARDNER. Now, gentlemen, here I have in my hand the legal history of pension order No. 78, set forth by Commissioner Ware, with the facts which led up to its adoption. It contains a great deal of historical data relative to this whole question. It has been suggested that it be made a part of the minutes of this meeting. Have you any objection?

Mr. SULLIVAN. I think it would be very valuable.

Mr. GARDNER. If there is no objection it will so appear in the hearing.

[The statement referred is as follows, clipped from The New York Tribune, October 17, 1904]:

LEGAL HISTORY OF PENSION ORDER 78.

COMMISSIONER WARE SETS FORTH FACTS WHICH LED UP TO ITS ADOPTION.

To the Editor of the Tribune.

SIR: The Pension Bureau, unlike other of the Government bureaus, is under the immediate charge of the President, and he has a right to prescribe the duties of the

Commissioner, which includes the right of directing what the Commissioner shall do and how he shall do it.

This duty has for many years been exercised, and heretofore without question. The law is as follows, taken from the United States Statutes:

"SEC. 471. The Commissioner of Pensions shall perform, under the direction of the Secretary of the Interior, such duties in the execution of the various pension and bounty land laws as may be prescribed by the President."

Order 78 was based upon the act of June 27, 1890, as amended. Said act, when read parenthetically, is as follows:

"SEC. 2. All persons who served ninety days or more in the military or naval service of the United States during the late war of the rebellion and who have been honorably discharged therefrom and who may be suffering from any mental or physical disability of a permanent character, not the result of vicious habits, which so incapacitates them from the performance of manual labor as to render them unable to earn a support, shall, upon making due proof of the fact according to such rules and regulations as the Secretary of the Interior may provide, be placed upon the list of pensioners and be entitled to receive a pension not exceeding twelve dollars per month and not less than six dollars, proportioned to the degree of inability to earn a support, and in determining such inability each and every infirmity shall be duly considered and the aggregate of the disabilities shown be rated."

Under the above law old age has been pronounced an infirmity, and has for many years been considered in the rating of disabilities. Order 78 introduced no new principle. It only made certain and definite the experience of the Bureau.

Before the passage of the law of 1890, above quoted, rates not specified by law had been fixed by the Commissioner—as early as March 3, 1873—and afterwards on several occasions, to wit: April 3, 1884; October 7, 1885; September 26, 1886; November 5, 1887, and August 27, 1888.

Congress could not specifically provide for every form of wound, accident, or disability, and so it legislated in general terms, leaving very much to the discretion of the Commissioner, who was himself compelled, after taking the experience of the Office for years, to make rules and formulate rates. This was done, and upon pages 28, 29, 30, and 31 of the pension laws, present edition, are found tables from which a few examples may be taken as illustrations.

I take the illustration of the thumb:

Loss of palm of hand and all the fingers, the thumb remaining	$17.00
Loss of thumb, index, middle, and ring fingers	17.00
Loss of thumb, index, and middle fingers	16.00
Loss of thumb and index finger	12.00
Loss of thumb and little finger	10.00
Loss of thumb, index, and little fingers	16.00
Loss of thumb	8.00
Loss of thumb and metacarpal bone	12.00

The first of such fixing rates after the said law of 1890 was made December 4, 1891.

After the adoption of the new pension law June 27, 1890, many questions came up for discussion, and among others the question of age as relating to disability, and under it appeals were taken to the Department from the rulings of the Pension Bureau.

The first one in which this matter was particularly called up was the case of Patrick Carroll, 6 P. D., 259, and the following is the syllabus of the decision:

"Old age or senility is a legal disability under the act of June 27, 1890, and examining surgeons should estimate the amount of disability arising therefrom for the performance of manual labor and for earning a support by manual labor."

Patrick Carroll was examined in 1891 by a medical board, and was found to be 62 years of age. His claim was rejected because the surgeons did not give him a rating, but the Department ruled:

"In fact, old age or senility is a legal disability under the act of June 27, 1890, and the surgeons should have given their estimate of the amount of disability arising therefrom for the performance of manual labor and the earning of a support thereby."

In other words, although there was no specific disability upon which the pension should have been granted, except that which was due to old age, the Department held that as Carroll was 62 years of age that it should be taken into consideration.

This is the beginning of the ruling upon the age subject as relates to the law of June 27, 1890.

After the Carroll decision, above referred to, Order 241, dated September 12, 1893, was signed up by William Lochren, Commissioner, fixing the rate of $12 for a pensioner who shall have reached the age of 75.

A copy of said order is as follows:

DEPARTMENT OF THE INTERIOR,
BUREAU OF PENSIONS,
Washington, September 2, 1893.

Order No. 241.

The circular of June 12, 1893, in respect to rating cases under the act of June 27, 1890, is withdrawn.

Hereafter, in affixing rates under this act, the medical referee or the medical officer in the Board of Revision shall weigh each disability and determine the degree that each disability, or the combined disabilities, disables the claimant from earning a support by manual labor, and a rate corresponding to this degree shall be allowed.

In cases in which the pensioner has reached the age of 75 his rate shall not be disturbed if he is receiving the maximum, and if he is not a pensioner he shall receive the maximum for senility alone if there are no special pensionable disabilities shown.

WILLIAM LOCHREN, *Commissioner.*

Four days after the issuance of the last order another order was issued by the Commissioner:

DEPARTMENT OF THE INTERIOR,
BUREAU OF PENSIONS,
Washington, September 6, 1893.

Order No. 242.

In keeping with the practice established by Order 241 as to the age of claimants under act of June 27, 1890, it shall be presumed that claimants for increase under act of January 5, 1893, who are 75 years of age, or older, are wholly disabled for manual labor within the meaning of the act last named.

WILLIAM LOCHREN, *Commissioner.*

Thereafter, on March 29, 1894, J. R. Van Mater, Acting Chief of the Board of Revision, under orders from Commissioner Lochren, issued an order making the age 65 years a pensionable rate.

A copy of Mr. Van Mater's order is as follows:

DEPARTMENT OF THE INTETIOR,
BUREAU OF PENSIONS,
Washington, March 29, 1894.

To the Board of Revision: By order of the Commissioner, the rate now received under the act of June 27, 1890, will be continued by the Board of Revision in cases wherein it appears that the pensioner has reached the age of 65 years.

J. R. VAN MATER,
Acting Chief, Board Revision.

[Indorsement, March 29, 1894.]

Respectfully referred to Doctor Featherstonhaugh, medical referee. The inclosed instructions were given to the Board of Revision to-day. If the Medical Division will return any cases referred by us where the pensioner is 65 years of age they will be acted on here.

J. R. VAN MATER,
Acting Chief, Board Revision.

On October 5, 1894, the Department, in the case of Joseph Hayden, 7 P. D., 332, held that although the evidence and medical examination did not show any great amount of disability from disease, but that nevertheless, taking into consideration his age, 68 years, in connection with such disease as he had, it was held that a ratable degree of inability to earn a support by manual labor was shown, and the Department used this language:

"But in the case of this claimant, who was 68 years old and naturally enfeebled by such advanced age, the same causes for disability from such disease are more serious than they would be in a younger man, and constitute a ground for incapacity for earning a support by manual labor which entitles the claimant to a rating under the law."

In July, 1895, the Department of the Interior, under the Hon. Hoke Smith, Secretary, decided the Jacob Rinkel case, 8 P. D., 30, of which the following is the syllabus:

"Where a declaration filed under said act contains no allegation as to any disabling cause, except that applicant is 75 years of age or over, such allegation of age will be held to be a sufficient allegation of disability.

"A declaration alleging age, whether over or under 75 years, and disability which may be expected as a natural pathological result of senility will be held to be good under said act."

In the body of the opinion the Department says:

"If a declaration sets forth that the claimant is 75 years of age, and no disabilities are alleged, the allegation of age alone will be held sufficient and a declaration will be held good, age being satisfactorily shown."

From the foregoing the procedure was definitely fixed that age only need be alleged by claimant.

On January 11, 1896, Assistant Secretary Reynolds, under President Cleveland, in the case of Thomas Hughes, Thirty-eighth Illinois Infantry, certificate No. 788690, said in effect that a pensioner who was on the rolls at $6 per month would not be dropped from the rolls when it appears that he has attained the age of 65 years, although without specific disabilities.

This holding was not published, but is shown, with others, by the files of this Office.

The next holding of the Department is dated July 7, 1897, in the case of Francis Frank, 9 P. D., 68.

The syllabus is as follows:

"A claimant who has attained the age of 65 years shall be deemed entitled to at least the minimum rate of pension unless the evidence discloses an unusual vigor and ability for the performance of manual labor in one of that age."

The claimant in this case had been denied a rating, and the Department cited the case of Jacob Rinkel, and of orders Nos. 241 and 242 (all above given), and says:

"In retirements from the Army the age of 62 is fixed as of itself a sufficient reason for considering the advance to this age as a warrant for the cessation of the active duties of an officer."

In this decision is also cited the act of January 29, 1887, fixing the age of 62 as entitling a soldier or sailor of the Mexican war to the rate of pension therein provided, independent of any disability.

The next important case was one decided by Hon. Thomas Ryan, many years a member of Congress, and in 1898 First Assistant Secretary of the Interior. The case is that of Chauncey Davis, 10 P. D., 12, of which the following is the syllabus:

"As the medical examination shows no appreciable disability, the rate of $6 per month is adequate under the act of June 27, 1890, though claimant is 60 years of age and his system is relaxing by reason thereof."

and in the opinion the Department says:

"It is believed that a $6 rating for senile debility is proper and commensurate with the degree of disability shown in this case, and said rating having been allowed it is sustained."

So it appears from the foregoing that various ages have been taken by the Department as indicating disability from senility, and these ages extend from 60 years up.

In the Book of Practice, page 96, paragraph 9, published in 1898, the following practice is laid down by the Commissioner of Pensions and approved by the Hon. C. N. Bliss, Secretary of the Interior:

"Claimants who have attained the age of 75 years are wholly disabled for manual labor within the meaning of the law and are entitled to the maximum rating under the act of June 27, 1890. Claimants who have attained the age of 65 years shall be deemed entitled to at least the minimum rate under that act unless the evidence discloses an unusual vigor and ability for the performance of manual labor in one of that age."

These rates were not fixed by the Commissioner of Pensions until it became apparent to the Bureau through long experience in handling the claims that such and such disabilities did disable claimants in certain degrees.

When the writer became Commissioner, May 10, 1902, Congress was in session, and the foregoing were the rulings of the Department. Persons making applications setting forth their ages were granted pensions at $6 and $12 for the ages of 65 and 75 years.

In a very few days after assuming the office the writer found that the cost of medical examinations was exceeding the appropriation, and one of his first duties was to appear before Congress and show why he should ask for over $80,000 more of money, the sum of $700,000 having been theretofore appropriated.

The next year, owing to the increase of the business, an extra sum of $156,000 had to be provided for. This led to an immediate examination of the pending conditions. It was found that those who were 62 years old were able to prove by their neighbors and medical assistants that they were one-half disabled from earning a

support by manual labor. Those at 65 years were able to prove more; so also at 68 and 70 years old.

Mr. Davenport, the First Deputy Commissioner, instituted an examination into adjudicated cases for the purpose of finding out the proportions of rejections of those who were 65 and over. Thousands of cases were examined.

An estimate was made as to the cost to the Government of examining these cases, and it was found that applications were made one after another and examinations made one after another concerning the same pensioner, and that these examinations cost the Government in surgeon's and Bureau expenses at least $10 apiece.

On the other hand, it was expensive to the claimants to leave their homes and go to places where there were examining surgeons, to pay railroad fare and hotel bills, and it was found that a very large number of these old soldiers often had to make two trips, and were very often cared for by Grand Army of the Republic posts and by charitable associations to enable them to make the trips, and that the trips would average in cost about $10 apiece.

The estimate which Mr. Davenport made was that not over 2 per cent of those who were 62 years old were finally rejected, and not over 3 per cent of those who were 70 years old were denied pensions for total disability.

In view of the fact that applications came in at the rate of over 200,000 a year for original and increase pensions, it was seen that, as a pension under an age order would be simply anticipatory for a year or two, it was a saving to the Government to arrange an age pension rule.

This would save $100,000 to 10,000 old-soldier applicants, if under the age order, and a correspondingly large amount to the Government.

Thereupon order No. 78 was prepared in tentative form and submitted to the Department in the latter part of June, 1903. Its adoption in 1904 was not a matter of sudden or spontaneous action, nor did it have connection with any political question. It was a proposition carefully considered in the interests of the Government before it was promulgated. It has worked with perfect satisfaction. It was never expected to be contrary to the Constitution or any laws, because it was in direct line of established precedent and practice, and within the power given to the President, to the Department, and to the Pension Bureau by Congress.

By adopting the rule in one hundred cases the Bureau will be wrong in two cases out of one hundred—perhaps three—but the saving to the Government and the saving to the old soldiers will more than compensate for the excepted cases, for in such cases the soldier, if rejected, would have been able in two or three more years to have established his claim anyhow to a pension, so that the loss to the Government as far as that is concerned is quite trivial in comparison with the benefits.

Since Order No. 78 has been made, General Black and Judge William Lochren, both of whom were Commissioners under the Democratic régime, have pronounced Order No. 78 to be a rightful and proper act, and it is the opinion of the writer that it will stand for all time as being one of the features of our pension system—a feature derived from experience and based upon considerations which the community will recognize as persuasive.

E. F. WARE,
Commissioner.

WASHINGTON, *October 14, 1904.*

Mr. SULLIVAN. Following out the line that I suggested a while ago, I mean, Mr. Chairman, if the Pension Commissioner had an examination made of the number of applicants for increases since March, 1904, the time when that order No. 78 went into operation, and should learn that practically every applicant did get his increase, and if the Commissioner could show us that the number of rejections was very few, I think that would be a very important fact for us to be able to state to the House in connection with this item, because I apprehend that this item will be questioned, particularly by some of the Southern Members who may want to debate, and if we could say that we will save $250,000 in the item of medical examination, it seems to me that would be decisive on the question.

Mr. GARDNER. Suppose we would save $100,000, considering the extent of the increase. That is another thing that ought to be worthy of consideration. It is a hardship to many of these men to go 20 or

30 or 40, or perhaps 50 miles, to a pension examining board at their time of life, and frequently they incur very material expense in going there.

Mr. KEIFER. And it is troublesome in some cases. I understand the Commissioner to state substantially that in his opinion this amendment will not increase the value of the pension roll in any substantial way.

Mr. WARNER. I do not think it will increase the pension roll substantially at all.

Mr. TAWNEY. Is it not a fact, Mr. Commissioner, that almost every soldier to-day knows of the issuance of this order now? Do they not know that they can obtain a pension on account of age, and also that they must take a medical examination?

Mr. WARNER. They know that their pensions can be increased.

Mr. TAWNEY. Do you think the money that the Government has to pay for the medical examinations which they are obliged to take or that the amount which they are obliged to pay out for the purpose of traveling in order to be examined would prevent or keep them from making applications for obtaining their increase?

Mr. WARNER. No.

Mr. TAWNEY. Then this certainly will not increase the number of pensioners.

Mr. WARNER. We have examining boards at points of easy access to the pensioners, and the great majority of old soldiers are of the opinion that they can obtain the increase without any medical examination. They are of opinion that order No. 78 executes itself, and that they can obtain their pensions without medical examination. They have it all down in their books.

Mr. KEIFER. You say you propose to advise them by circular letters that it is not necessary to have another examination, and that only certain things are required?

Mr. WARNER. They will learn that within two days. It will be in all the newspapers of the United States, and they will be notified that it will not be necessary to take an examination. Occasionally a man refunds his pension and does not even want to keep what he has received, and wants to be dropped.

Mr. GARDNER. That is so rare that it proves the rule. There is no rule without its exceptions.

APPLICATIONS AND REJECTIONS FOR INCREASE ON ACCOUNT OF AGE.

Do you make a motion, Mr. Sullivan, that the Commissioner be requested to furnish the committee with the number of rejections of applications for increase on account of age?

Mr. SULLIVAN. Yes; I make that motion now. I suggested it before, but now I make the definite motion that the Commissioner be requested to furnish the committee with information respecting the total number of applicants for increases who have arrived, respectively, at the ages of 65, 68, and 70, and have been rejected.

Mr. GARDNER. Under order No. 78?

Mr. SULLIVAN. Yes; since the 1st of March, 1904.

Mr. KEIFER. Or since April 13, 1904, when the order went into effect?

Mr. SULLIVAN. Yes; since April 13, 1904.

Mr. WARNER. That would not give very valuable information, because it has been only two years since the order went into effect. If a man came in at 65 he is not ready yet for increase at 68. The great majority of them would not yet have accrued, because it takes three years and it has only been running two years already. A man applies as soon as he is able—say at the age of 62—and he must wait three years before he applies for an increase. It is the same way at 65. He can not apply until three years afterwards. When he is 68 years old he applies after two years. So, on the whole, probably a very small proportion of those who are entitled to increase have applied for it, because they were 63 or 64 when they first got their pensions.

Mr. SULLIVAN. I do not quite see the point, if you will pardon me, Mr. Commissioner. What we are really trying to ascertain is the proportion of persons who make applications for increase when they arrive t the age of 65 and who are rejected.

Mr. WARNER. Oh, that is the idea; I see.

Mr. SULLIVAN. I limited it to April, 1904. I do not see any reason why it should not go back before that time.

Mr. WARNER. The applications for increase are comparatively few within that time, and the number of rejections would be small. The way to get the number of examinations for increase would be to find out how many people are on the roll under the law of 1890, and then you can know the number who would be entitled to apply for the increase under order No. 78.

Mr. KEIFER. That would require a great deal of labor to get that?

Mr. THOMPSON. No; we have that right in the Bureau.

Mr. WARNER. How many are there of those? That would open their eyes.

Mr. GARDNER. When will you get that up, Mr. Commissioner? I think, although I may be mistaken, that when this amendment goes into effect it will cut the pension examiners' business nearly in half.

Mr. WARNER. It will cut it fearfully.

Mr. GARDNER. Yes; because there are 465,000 invalid pensioners now under order No. 78.

Mr. WARNER. Now, you have got it. All those soldiers under the law of 1890 are entitled to apply for an increase under the order No. 78, and each board is entitled to $6 for examination. You can not do a thing that would be more popular than to make that amendment. It will save money to the Government, and it will save money to the old soldiers.

Mr. KEIFER. Let us see if we understand that amendment. A person who is drawing a pension under the law of 1890 would have to be examined again if he came in at the age of 62?

Mr. WARNER. If he applied for the increase, he would be examined unless you put that in.

Mr. KEIFER. I was thinking this was an increase from the previous age allowance.

Mr. WARNER. No, that would make it anything. It makes age a specific disability. You are here adding age to a number of former specific disabilities, and that will save more money than I thought at first. I think it will be found to save more money than we supposed when you come to figure it out right.

Mr. SULLIVAN. My idea was this, Mr. Chairman: If we should show that a certain number of men had applied for an increase at the ages

of 65 or 68, and a great majority of them were passed and only a few were rejected, because they were sound in wind and everything, it would be well to have that record for use on the floor of the House, especially if it could be shown that as a result of this amendment there would be no increase to the pension rolls.

Mr. KEIFER. And it would be a saving in the cost of medical examinations.

Mr. GARDNER. Now, Mr. Sullivan, there will be an increase in the amount of pensions whether order No. 78 obtains or not. These men are getting increases constantly.

Mr. SULLIVAN. Yes.

Mr. GARDNER. But the saving will be in the medical examinations.

Mr. TAWNEY. Mr. Sullivan's idea now is this: He wants to know the number of rejections on medical examinations.

Mr. WARNER. Yes; you will find that is very small.

Mr. TAWNEY. If we have that, as he says, in the House, we would have a very good basis for the claim that there would be a saving in consequence.

Mr. SULLIVAN. Yes; there will be men on that floor who will be certain to make the claim that this will increase the rolls.

Mr. WARNER. There are 267,100 pensioners under the act of 1890 on the roll who will be entitled to an increase under order No. 78. There are a great many others on the roll under the act of 1890, but these 267,000 are now drawing $12 a month. They will be entitled to increase, and be compelled to have a medical examination, if the law stands as it is now. That will make $1,385,000.

Mr. SULLIVAN. That will be about $5 to an examination?

Mr. WARNER. Yes.

Mr. SULLIVAN. That would make over $1,300,000, in round numbers.

Mr. WARNER. It does not come out of the pensioners.

Mr. SULLIVAN. It comes out of the doctors. [Laughter.]

Mr. THOMPSON. $800,000 is estimated this year.

Mr. KEIFER. I do not think we are called upon to appropriate for the doctors. We should appropriate as large an amount as is necessary, but——

Mr. SULLIVAN. We are appropriating for the doctors, and cutting them, but we are cutting the lawyers also in the same bill.

Let me make a suggestion about your amendment, if you please. It reads: "And provided further, That age is a permanent specific disability within the meaning of the pensions laws." What you really mean is, within the meaning of the pension laws and the orders of the Commissioner of Pensions.

Mr. KEIFER. They become a part of the law in their execution.

Mr. SULLIVAN. Here is a law which you are passing, in which you make reference to an order which may or may not be permanent.

Mr. KEIFER. There is no reference to the order.

Mr. TAWNEY. What is the statute which defines specific disability?

Mr. THOMPSON. Section 4698½ of the Revised Statutes.

Mr. TAWNEY. Why not say, "within the meaning of section 4698½?"

Mr. KEIFER. There might also be other laws.

Mr. WARNER. Make it just a specific disability.

Mr. SULLIVAN. What you really intend to accomplish is this: You want to make the arrival at the age of 62, or before that, a permanent specific disability?

Mr. KEIFER. Undoubtedly.

Mr. SULLIVAN. Why not state that?

Mr. KEIFER. Because it might be changed in some way or other----

Mr. SULLIVAN. Why not do this ourselves, and not allow the Commissioner of Pensions to legislate?

Mr. KEIFER. That was the complaint made of Order 242.

Mr. SULLIVAN. That was attacked by Republicans, and this last order was attacked by Democrats. I remember Mr. Cockran of New York made a long argument against it in the last Congress, and it seemed to me that his argument had considerable force.

Mr. GARDNER. If a man's leg is cut off below the knee or above the knee, or if a man loses his arm, or is blind, or totally deaf, each one of those things is a specific disability that requires no examination. Those disabilities reside in the law. Now this age is also a specific disability, of 62, 65, 68, and 70 years.

Mr. SULLIVAN. The point is that it says simply age. The question arises, what age? And to arrive at what age you must consult the ruling of the Commissioner of Pensions. If you say, "Provided further, That the age of 62, or before, is a permanent specific disability within the meaning of the pension laws," there is no necessity to refer to the Commissioner's orders. The law is there. If some Commissioner of Pensions wants to change it subsequently, and makes the age 60, instead of doing it in the privacy of his office with a stroke of the pen, he must come to a committee of Congress, and Congress will legislate on it; and it seems to me that is a proper proceeding.

Mr. GARDNER. But, at that point, Mr. Sullivan—I am 60 years of age, and there is no probability of its being made to apply younger.

Mr. SULLIVAN. No——

Mr. KEIFER. The answer to Mr. Sullivan, I think, is this: We have a general law which authorizes the issue as it has been claimed and maintained—authorizes the issue of orders and regulations and rules upon which is determined the rate of pension. While I am inclined to agree with Mr. Sullivan that it is best to do it with legislation, we ought not to undertake to change existing law upon an appropriation bill. Your suggestion would require us to go into that and change that section. What section is that, the section under which the order No. 78 was issued?

Mr. THOMPSON. That is the act of June 27, 1890.

Mr. TAWNEY. This section of the Statutes, section 4698½ of the Revised Statutes, does not define what are specific disabilities?

Mr. KEIFER. That is the section I had in mind.

Mr. TAWNEY. Can you tell us, Mr. Thompson, what section does define specific disabilities? This section which you mentioned, 4698½, says: "Except in cases of permanent specific disabilities no increase of pension shall be allowed to commence prior to the date of the examining surgeon's certificate establishing the same made under the pending claim for increase; and in this, as well as in all other cases, the certificate of an examining surgeon, or of a board of examining surgeons, shall be subject to the approval of the Commissioner of Pensions."

Mr. THOMPSON. It has been held by the Department——

Mr. WARNER. The statute tells what shall be considered specific disabilities.

Mr. TAWNEY. Does not the statute provide that?

Mr. THOMPSON. No; not as I recall. The Attorney-General has decided that a permanent specific disability is one authorized by Congress, in which they fix a given rate: a disability such as Congress has fixed a rate for. For example, the loss of a leg or of an arm; they have fixed it as at such a rate, and have increased the rate from time to time.

Mr. KEIFER. Age has nothing to do with that.

Mr. TAWNEY. No; I know that. But we are here adding to the other terms of permanent specific disabilities, age. What I want to get at is, what particular law, if any, defines the loss of an arm, or the loss of a leg, or the loss of an eye as a specific disability. If there is such a particular law, we can make reference to that in this amendment, instead of saying, "under the pension laws."

Mr. KEIFER. That is always safe to say, "under the pension laws."

Mr. TAWNEY. That simply proceeds upon some other line.

Mr. THOMPSON. There is not any special or particular statute, as I recall, that provides what a specific disability is.

Mr. WARNER. Oh, yes; where it provides that for a certain disability there shall be a special rate of pension.

Mr. TAWNEY. The Attorney-General defines that that is a specific disability under that law?

Mr. WARNER. Yes.

Mr. TAWNEY. There is this objection, Mr. Sullivan, to the suggestion which you make: If you start at 62 years of age, at which the fact of age shall be considered as a specific disability, it would be necessary, would it not, in order to avoid any confusion in the minds of the old soldiers, to go on and say, "at the age of 65 they shall be entitled to an increase, and at the age of 68, and of 70." Otherwise the old soldiers would get the impression that when they reached the age of 63 they would be entitled to an increase, and for every additional year.

Mr. SULLIVAN. Yes; there is that objection to it. But I think the thing ought to be made clear; that is all. It should refer for its meaning back to the pension law; otherwise you would have a law, or an amendment to a law, resting upon a shifting basis.

Mr. TAWNEY. Does the law declare that orders when issued shall have the force and effect of a statute?

Mr. KEIFER. It is not necessary that that should be so. If the law authorizes the issuance of an order, then the order becomes effective under that law.

Mr. TAWNEY. That would make it of the same force and effect of law?

Mr. KEIFER. Yes; that has absolutely been the construction. It was formerly somewhat doubtful, but it is pretty well established now.

Mr. GARDNER. There is another reason in favor of Mr. Sullivan's contention. There are 300,000 Spanish war soldiers coming along right after the veterans. They have not reached the age of 62 yet. The whole tendency is liberality in legislation toward the pensioners. Then there are quite a number of those approaching 62. It did not occur to me when you made the objection that this does not apply to the civil war veterans only. It is any soldier.

Mr. THOMPSON. Order No. 78 applies to the war of the rebellion only, because that is the construction of the act of 1890, which applies *to* soldiers of the war of the rebellion purely.

Mr. KEIFER. If we go to make a law and get into a field that belongs to another committee——

Mr. SULLIVAN. We are doing that now.

Mr. KEIFER. We are doing it to some extent now, it is true, but——

Mr. SULLIVAN. You are doing it quite as effectively, but a little more delicately and unobtrusively. If you were intending to escape the eagle eyes of the medical profession, that is one way; but if you put a provision in there that any soldier or sailor of the civil war, arriving at the ages of 62, 65, 68, or 70, respectively, shall be regarded as permanently disabled within the meaning of the law——

Mr. GARDNER. Why limit it to soldiers and sailors of the civil war?

Mr. SULLIVAN. Because that is all, as I understand, that the order No. 78 applies to——

Mr. KEIFER. It does not say that on its face——

Mr. SULLIVAN (continuing). And also because we are not ready yet, I presume, to write a law that will take in the Spanish war veterans when they arrive at the age of 62. It will be time enough to take care of that when they get older.

Mr. KEIFER. I want to correct my statement to this extent: While the order itself does not refer in words to soldiers of the war of the rebellion, it refers to the act of June 27, 1890, which relates only to soldiers of the war of the rebellion, so that I was mistaken to that extent.

Mr. SULLIVAN. In your amendment you say that age is a permanent specific disability. The proper inquiry that would arise there would be, what age?

Mr. KEIFER. That brings us back to the orders for the purpose of discussion. They are being operated under as though they were statutes.

Mr. SULLIVAN. Suppose the question should arise later as to whether pensioners could be paid and somebody had to construe this act of Congress. What light could they get on the subject when they came to that blind provision—age is a permanent specific disability?

Mr. KEIFER. They could only do it in the light of the history of the administration of the law. I agree with you, generally, Mr. Sullivan, but——

Mr. SULLIVAN. You could not introduce the discussions of a committee of the House into a court?

Mr. TAWNEY. Suppose this amendment were made to read, "The age of 62 years and over shall be considered as a permanent specific disability under the pension laws," would the Bureau of Pensions then construe that in connection with the order fixing the right to increase a pension at the age of 65, or 68, or 70?

Mr. WARNER. Yes; there is the statute. You can not get over the statute.

Mr. TAWNEY. Then the objection I made to Mr. Sullivan's proposition a moment ago would not obtain. I can not see how it would be safe for our committee to go in on the floor with this proposition without a rule. If we do, we would make 62 years of age and over a specific disability. If we should get a rule to make that a subject of consideration, it would be all right; but it is not in order. It is subject to a point of order. If a point of order were not made, and there should be debate, then it would be subject to amendment. Would there not be some danger in the House of an attempt to reduce the age to 60 years, or 58 years, or something like that?

Mr. KEIFER. I do not believe there is any danger of that.

Mr. TAWNEY. One of the reasons, I think, for this law giving to the Chief Executive power to issue orders like this, was to avoid the danger of legislation which might be unwise legislation in respect to pensions, owing to the liability of sentiment exclusively operating with respect to the ex-Union soldiers and survivors of the civil war. That would also cut off, I should think, the probability of an Executive order in the future making the age below 62 years. In any event, whatever the subcommittee agrees upon, I think the safe thing would be to get a rule making this in order without amendment.

Mr. KEIFER. I do not think they will try to change it. They might make a point of order on it, and that would cut it out.

Mr. GARDNER. How would this do? That age, as construed in order No. 78——

Mr. KEIFER. I do not like that at all.

Mr. GARDNER. That avoids all ambiguity.

Mr. KEIFER. There is no ambiguity here now. The wording covers everything now.

Mr. WARNER. The only effect of that is simply to cut off medical examinations.

Mr. GARDNER. I want to ask the Commissioner, before we leave this line of inquiry, whether, in his judgment, the saving to the Government in medical examinations, in case this amendment prevails, would be equal to or more than the increase in the amount paid out?

Mr. WARNER. I have no doubt but that the saving would be more. I have no doubt but that the saving to the Government will be more than the extra disbursements on account of pensions. But Mr. Sullivan suggests that we can get the number of rejections. You will find they are very few. If we can get at them without too much work, we will send you the number of rejections. When do you report the bill?

Mr. TAWNEY. We can not do it until we have had a meeting of the full committee. It could not probably be taken into the House before the end of this week.

Mr. WARNER. As Mr. Thompson says, we do not keep a record of rejected cases, and in order to get the data desired we would have to take up every case that has been passed upon.

Mr. SULLIVAN. That would require a vast amount of work by his office force.

Mr. TAWNEY. Your idea is that the number of rejections is very few?

Mr. WARNER. Yes, very few.

Mr. KEIFER. Do you concur in his judgment in that, Mr. Thompson?

Mr. THOMPSON. I do not believe there have been a half dozen cases; in my opinion there have not been that many.

Mr. WARNER. The number is infinitesimally small, as compared with the total number of claims.

Mr. KEIFER. I move that the chairman be empowered to fill up these blanks. There is no controversy about the amounts.

Mr. GARDNER. It has been moved and supported that these blanks be filled up. All in favor say aye, and those opposed no. The ayes have it, and it is carried.

PROPOSED AMENDMENT BY MR. SULLIVAN.

Mr. SULLIVAN. I want to offer this substitute amendment for Mr. Keifer's. See if it is not clearer. I will read it to you. I want you

to tell me whether this is what you are trying to get at, first of all. Then you can decide whether or not you will agree to it. Here it is:

"And provided further, That medical examinations shall not be required in cases of applications for pensions or increases thereof by those who have reached the ages of 62, 65, 68, and 70, respectively; but such ages shall be regarded as permanent disabilities within the meaning of the pension laws."

Mr. GARDNER. Should it not be "specific," instead of "permanent disabilities," so as to harmonize with the general statutes?

Mr. SULLIVAN. I will make that change. I will make it read, "permanent specific disabilities."

Mr. KEIFER. You move that in addition to the amendment we have already agreed to?

Mr. SULLIVAN. No; I want to substitute this for that. But I want to ask, first of all, whether that does not describe it? Does it, Mr. Thompson?

Mr. THOMPSON. You say pension laws?

Mr. SULLIVAN. Yes.

Mr. THOMPSON. Age can not be considered under the general laws. If you will put in there "the act of June 27, 1890," that would cover it; pensions "under the act of June 27, 1890."

Mr. SULLIVAN. What does that include?

Mr. THOMPSON. All those who served 90 days in the war of the rebellion and received an honorable discharge.

Mr. SULLIVAN. Yes; then make it "permanent disabilities," and "under the act of June 27, 1890."

Mr. KEIFER. We would have the same controversy under that.

Mr. SULLIVAN. Here is the amended form:

"*And provided further*, That medical examinations shall not be required in cases of applications for pensions or increases thereof, under the act of June 27, 1890, by those who have reached the ages of 62, 65, 68, and 70, respectively; but such ages shall be regarded as permanent specific disabilities."

That has the advantage of being clear and definite, Mr. Keifer. The other is certainly blind.

Mr. KEIFER. It is blind, but it is simply as it has been since operations were commenced under that act.

Mr. SULLIVAN. But over 62 years of age is definitely mentioned.

Mr. KEIFER. What is the date of order No. 242?

Mr. THOMPSON. 1893.

Mr. SULLIVAN. Some age was mentioned there?

Mr. THOMPSON. Yes, it was in September, 1903. The age of 75 is mentioned there.

Mr. GARDNER. I do not think there would be any ambiguity under that. Everybody knew from the discussion what was the meaning of the law. Everybody understood that to be an age pension at the time. The country understands that so now.

Mr. SULLIVAN. Yes; but the query arises, What age?

Mr. KEIFER. The age is fixed by the order. The order is based on the law. That is the point about it. I move that we adjourn.

Mr. GARDNER. What is your pleasure, gentlemen? Do you want another meeting?

Mr. SULLIVAN. I simply want to have the law framed so that it will not be misunderstood by anybody; not so that it is easily misunderstood, but so that it can not be misunderstood.

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